

ARTICLE 1323

PROCEDURES AND CONTROLS GOVERNING NON-CONFORMING USES

1323.01 Purpose

The regulations governing existing non-conforming uses are set forth in this Article and are intended to provide a gradual remedy for the incompatibilities resulting from such non-conforming uses. While such uses are generally permitted to continue, these regulations are designed to restrict further investment in such uses, thereby keeping them from becoming more permanent establishments in appropriate locations.

These regulations are thus designed to preserve the character of the districts established in this Zoning Code in the light of their peculiar suitability to particular uses, and thus to promote and protect health, safety, and general welfare.

1323.02 Definitions

- (a) Non-Conforming Structure or Lot. A structure or lot that does not conform to a dimensional regulation prescribed by this Ordinance for the district in which it is located or to regulations for signs, off-street parking, off-street loading, or accessory buildings, but which structure or lot was in existence at the effective date of this Ordinance and was lawful at the time it was established.
- (b) Non-Conforming Use. A use of a building or lot that does not conform to a use regulation prescribed by this Ordinance for the district in which it is located, but which was in existence at the effective date of this Ordinance and was lawful at the time it was established.

1323.03 Continuation

The lawful use of any building, any structure or the lawful use of any land existing at the effective date of this Ordinance may be continued although such use does not conform with the provisions of this Ordinance except as otherwise provided in this Article.

1323.04 Alteration or Extension

- (a) Non-Conforming Structures. Non-conforming structures may be altered, reconstructed, or enlarged provided that such alteration, reconstruction or enlargement does not increase the extent of the non-conformity existing on the effective date of this Ordinance. In the case of a non-conforming structure which is used by a non-conforming use, such alteration, extension or enlargement shall also meet the requirements of paragraph (c) of this Section.

- (b) Non-Conforming Lots. Non-conforming lots are subject to the applicable provisions of Article 1318.

- (c) Non-Conforming Uses. Non-conforming uses shall not be altered, reconstructed, extended or enlarged, except in accordance with the following provisions:
- (1) Such alteration, reconstruction, extension or enlargement shall be permitted only by special exception under the provisions of Article 1325, Zoning Hearing Board.
 - (2) Such alteration, reconstruction, extension or enlargement shall be only upon the same lot or any contiguous lot purchased by the owner of the non-conformity in existence within one (1) year of the date the uses become non-conforming.
 - (3) Any increase in volume or area of the non-conforming use shall not exceed an aggregate of more than fifty (50) percent of such volume or area during the life of the non-conformity.

1323.05 Restoration

No building or structure which is legally condemned or damaged by fire or other natural causes to the extent of more than sixty (60) percent of its then fair market value, may be repaired, reconstructed, or used except in conformity with the regulations of this Ordinance. A structure or building with damage to the extent of sixty (60) percent or less of its fair market value may be reconstructed, repaired, or used for the same non-conforming use, subject to the following provisions:

- (a) The reconstructed structure shall not exceed the height, area or volume of the damaged structure except as provided in Section 1323.04.
- (b) Reconstruction shall begin within one (1) year from the date of damage and shall be carried on without interruption.

1323.06 Abandonment

Whenever a non-conforming use of a building or land ceases and is abandoned for a continuous period of one (1) year or more, any future use of such building or land shall be in conformity with the provisions of this Ordinance. For purposes of this Ordinance, abandonment shall begin when the Bureau of Inspections decides that reasonable efforts to re-establish a non-conforming use have ceased. At this time, the Bureau of Inspections shall send notification to the owner stating that the City considers the property abandoned, or the use discontinued, and that the owner has one (1) year in which to file a report with the City refuting the Bureau of Inspections decision.

1323.07 Changes

Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use may be changed to another non-conforming use only under the following conditions:

- (a) Such change shall be permitted only by special exception, under the provisions of Article 1325, Zoning Hearing Board.
- (b) The applicant shall show that a non-conforming use cannot reasonably be changed to a permitted use.
- (c) The applicant shall show that the proposed change will be less objectionable in external effects than the existing non-conforming use with respect to:
 - (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic.
 - (2) Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, and vibration.
 - (3) Storage and waste disposal.
 - (4) Appearance.

1323.08 Displacement

No non-conforming use shall be extended to displace a conforming use.

1323.09 Applicability to Approved Non-Conforming Plans

Nothing contained in this Ordinance shall require any change in plans, construction or designated use of a structure for which a building permit was issued more than thirty (30) days prior to the adoption of this Ordinance or change in zoning district and the construction of which is begun within three (3) months after such adoption of change and diligently carried on. The approved plans shall not be altered in any way to increase the non-conformity.

1323.10 Prior Violations Continued

A non-conforming building altered or erected or a non-conforming use created, in violation of any previous provision, shall be regarded as continuing in such violation and shall not enjoy the privilege of legal continuance conferred by this Article upon other non-conforming buildings and uses.

1323.11

District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any non-conforming uses or structures existing therein.